

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JOHN THOMAS BAGLEY, 652853,)	
Petitioner,)	
v.)	No. 3:04-CV-2758-B
)	
DOUGLAS DRETKE, Director, TDCJ-CID,)	
Respondent.)	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. §636(b), implemented by an Order of the Court, this case has been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the Magistrate Judge are as follows:

FINDINGS AND CONCLUSIONS:

I. Factual background:

Petitioner filed this petition seeking a certificate of appealability (COA). The Court sent Petitioner a Magistrate Judge's Questionnaire to determine the cause number for which Petitioner seeks a COA. Petitioner responded by stating he is "in a quandry (sic)." He states the District Court denied his § 2254 habeas corpus petition and his motion for COA in cause number 3:03-CV-1731-D. The Fifth Circuit Court of Appeals likewise denied a certificate of appealability. Petitioner states that if he informs that Court that he is seeking a certificate of appealability for this cause number, the Court will inform Petitioner that the Fifth Circuit has already denied the COA.

Petitioner further states that if he informs the Court that he is seeking a COA for this case, cause number 3:04-CV-2758-B, the Court will deny the request because it has not entered

**Findings, Conclusions and Recommendation
of the United States Magistrate Judge**

judgment on a habeas petition in this case. Petitioner therefore requests that the Court decide which cause number the COA should be filed under.

Discussion:


Petitioner has not filed a habeas corpus petition in this case. His request for a certificate of appealability in cause number 3:04-2758-B should therefore be denied.

Petitioner's petition for certificate of appealability in cause number 3:03-CV-1731-D was denied by the Fifth Circuit on October 21, 2004. The Court is without jurisdiction to reverse the Fifth Circuit's order. Petitioner's motion for COA in cause number 3:03-CV-1761-D should be denied.

RECOMMENDATION:

For the foregoing reasons, the undersigned Magistrate Judge hereby recommends that the petition for certificate of appealability be DENIED.

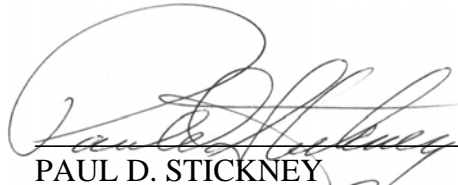
Signed June 1, 2005.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

The United States District Clerk shall serve a true copy of these findings, conclusions and recommendation on Petitioner. Pursuant to Title 28, United States Code, Section 636(b)(1), any party who desires to object to these findings, conclusions and recommendation must serve and file written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. A party's failure to file such written objections to these proposed findings, conclusions and recommendation shall bar that party from a *de novo* determination by the District Court. *See Thomas v. Arn*, 474 U.S. 140, 150, 106 S. Ct. 466, 472 (1985). Additionally, any failure to file written objections to the proposed findings, conclusions and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).


PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE